

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE

LOUISE GRAVES,
Plaintiff

v.

AUTO-OWNERS
INSURANCE COMPANY
Defendant

)
)
) No.: 1:22-cv-02296-STA-jay
)

MEMORANDUM IN SUPPORT OF MOTION TO AMEND RESPONSES TO REQUEST
FOR ADMISSION PURSUANT TO RULE 36(b)

I. INTRODUCTION

This civil action arises out of arises out of insurance coverage litigation Plaintiff answered request for admission on April 20, 2023. However, the dispositive motion deadline is May 5, 2023 and this loss has been appraised. Defendant will not be prejudiced by an amendment to the responses served on April 20, 2023 thus the motion to compel admission should be denied.

II. FACTS

The Plaintiff responded to Defendant's request for admission on April 20, 2023.

The dispositive motion deadline is May 5, 2023.

This loss has been fully appraised.

Defendant will not have a sudden need to obtain evidence based on the amendment.

III. ANALYSIS

1. Sixth Circuit Standard for Amending Request for Admissions pursuant to Rule 36(b).

In *Clark v. Johnston*, 413 Fed. Appx 804, 818-819 (6th Cir. 2011) and *Lafarge North America, Inc., v. Wallboard Materials, LLC*, 2:13-cv-02151-JPM-tmp, the Sixth Circuit and this Court held that Request for Admissions should be withdrawn or amended when the amendment with aid in the presentation of the merits and the non-movant will not be prejudiced. Amendments should be granted when allowing them to stand would eliminate any presentation of evidence on the merits of the claim. *Clark*, 818-819. The non-movant cannot show prejudice if the discovery cut-off has not passed, the dispositive motion deadline has not passed, and the non-movant will not have a sudden need to obtain evidence if the amendment is granted. *Id.*

2. Application to the Case at Bar

Applying *Clark* and *Lafarge North America, Inc.*, the Court should authorize Plaintiff to amend its response the August 20, 2023. The amendment will promote the presentation of the case on the merits as the responses go to the merits of the claim. The Defendant cannot show that it will be prejudiced by the dispositive motion deadline does not expire until May 5, 2023 and this loss has been fully appraised. There is no sudden need for the Defendant to obtain evidence in response to the granting of the amendment since the discovery cut-off doesn't run until July.

IV. CONCLUSION

The Court should grant the Plaintiff's Motion to Amend its responses to Request for Admission to the Responses served on April 20, 2023.

Respectfully submitted,

/s/Drayton D. Berkley
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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that the foregoing document has been served upon the following counsel of record or parties pro se in this cause **ONLY BY ELECTRONIC TRANSMISSION** to the following:

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This, the 20th day of April 2023.

/s/Drayton D. Berkley
Drayton D. Berkley

Respectfully submitted,

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This, the 20th day of April 2023

/s/Drayton D. Berkley
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